

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>T.G., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0536</b>
	)	<b>Issued: July 2, 2024</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS HEALTH ADMINISTRATION,</b>	)	
<b>Portland, OR, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. McGINLEY, Alternate Judge

**JURISDICTION**

On April 23, 2024 appellant filed a timely appeal from an April 11, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish that her diagnosis of COVID-19 was causally related to the accepted employment exposure.

**FACTUAL HISTORY**

On February 2, 2024 appellant, then a 22-year-old administrative officer, filed an occupational disease claim (Form CA-2) alleging that she developed COVID-19 due to factors of her federal employment. She explained that on January 22, 2024, she was working at her assigned

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

desk, which was outside the police chief's office. Appellant alleged that the police chief was sick when he came into work that day and was wearing a mask. On Thursday, January 25, 2024, she woke up very sick and thought it was the flu; however, she tested positive for COVID-19 on January 21 2024. Appellant noted that she first became aware of her condition on January 25, 2024, and realized its relation to her federal employment on January 31, 2024. She stopped work on January 25, 2024.

Along with her claim, appellant submitted a statement which reiterated the circumstances regarding January 22, 2024. She further related that on Wednesday, January 31, 2024 she returned to work and was advised that the police chief had COVID-19. Appellant was then given a COVID-19 test by Deputy Chief M., which showed a weak positive. She was sent home and told to contact Occupational Health, who advised her to contact her physician or go to a local testing site. Appellant noted that she went to a pharmacy where she had a positive test for COVID-19.

Appellant submitted a rapid antigen test result from a pharmacy dated January 31, 2024, which revealed that she tested positive for COVID-19.

In a development letter dated February 8, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, provided a questionnaire for her completion, and afforded her 60 days to respond. In a separate letter of the same date, OWCP also requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding appellant's occupational disease claim. It afforded the employing establishment 30 days to respond.

In a response dated February 8, 2024, a human resource specialist for the employing establishment confirmed that appellant's allegations correctly described her exposure to COVID-19 at work.

In a follow-up letter dated March 8, 2024, OWCP informed appellant that it had performed an interim review and the evidence remained insufficient to establish her claim. It noted that she had 60 days from its February 8, 2024 letter to submit the requested supporting evidence. OWCP further advised that if additional evidence was not received during that time, it would issue a decision based on the evidence contained in the record. No response was received.

By decision dated April 11, 2024, OWCP denied appellant's claim, finding that she had not submitted medical evidence establishing that her diagnosis of COVID-19 was causally related to the accepted employment exposure.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

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<sup>2</sup> *Id.*

limitation of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish a claim for COVID-19 diagnosed after January 27, 2023, a claimant must provide: (1) evidence of a COVID-19 diagnosis; (2) evidence that establishes the claimant actually experienced the employment incident(s) or factor(s) alleged to have occurred; (3) evidence that the alleged incident(s) or factor(s) occurred while in the performance of duty; and (4) evidence that the COVID-19 condition is found by a physician to be causally related to the accepted employment incident(s) or factor(s). A rationalized medical report establishing a causal link between a diagnosis of COVID-19 and the accepted employment incident(s)/factor(s) is required in all claims for COVID-19 diagnosed after January 27, 2023.<sup>6</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosis of COVID-19 was causally related to the accepted employment exposure.

As noted, a rationalized medical report establishing a causal link between a diagnosis of COVID-19 and the accepted employment incident(s)/factor(s) is required in all claims for COVID-19 diagnosed after January 27, 2023.<sup>7</sup>

In support of her claim for COVID-19, appellant submitted a rapid antigen laboratory test result from a pharmacy, which revealed that she tested positive for COVID-19. However, the Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment factors caused or aggravated the diagnosed condition.<sup>8</sup> Accordingly, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between the diagnosis of COVID-19 and the accepted employment exposure, the Board finds that appellant has not met her burden of proof.

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<sup>3</sup> *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> FECA Bulletin No. 23-02 (issued December 15, 2022). In accordance with the Congressional intent to end the specialized treatment of COVID-19 claims for Federal workers' compensation under section 4016 of the American Rescue Plan Act (ARPA) of 2021, Public Law 117-2 (March 11, 2021), OWCP issued FECA Bulletin No. 23-02, which updated its procedures for processing claims for COVID-19 diagnosed after January 27, 2023.

<sup>7</sup> *Id.*

<sup>8</sup> *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her diagnosis of COVID-19 was causally related to the accepted employment exposure.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 11, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board